

EXHIBIT C

1 IN THE UNITED STATES DISTRICT COURT

2 IN AND FOR THE DISTRICT OF DELAWARE

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4 INTELLECTUAL VENTURES I LLC : CIVIL ACTION
5 and INTELLECTUAL VENTURES :
6 II LLC, :
7 Plaintiffs, :
8 vs. :
9 :
10 CANON INC.; CANON U.S.A., :
11 INC.; OLYMPUS CORPORATION; :
12 OLYMPUS CORPORATION OF THE :
13 AMERICAS, OLYMPUS AMERICA :
14 INC. and OLYMPUS IMAGING :
15 AMERICA, INC., :
16 :
17 Defendants. : NO. 11-792 (SLR)

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Wilmington, Delaware
Tuesday, December 18, 2012
10:55 o'clock, a.m.

- - -

BEFORE: HONORABLE SUE L. ROBINSON, U.S.D.C.J.

- - -

Valerie J. Gunning
Official Court Reporter

1 a place as any to start or whether plaintiff has some issues
2 that we need to address in addition.

3 MR. KELLMAN: Your Honor, we can go through the
4 defendants' issues. That's fine.

5 THE COURT: Okay. All right. Well, I guess the
6 first broad issue is the protective order?

7 MR. PENSABENE: That's correct, your Honor.

8 THE COURT: All right.

9 MR. PENSABENE: As we've laid out in our letter
10 to the Court, there are really four issues relating to the
11 protective order, all revolving around the prosecution bar
12 and the patent acquisition bar.

13 THE COURT: Which you say that last as though
14 this has been around a long time. I've only seen it in the
15 last couple of months, and I, frankly, don't understand it
16 and don't understand why anyone thinks it's appropriate.
17 But we will get to that when we get to that.

18 MR. PENSABENE: I can address that right away,
19 your Honor.

20 THE COURT: All right.

21 MR. PENSABENE: The patent acquisition bar,
22 you're correct, is a relatively new thing in protective
23 orders, but I think that's more a function of fact that
24 patent litigation has evolved and continues to evolve and
25 that you do have entities, such as IV, Acacia, et cetera,

1 which are in the business of going out, acquiring patents
2 for the purpose of asserting them against as many companies
3 as they possibly can.

4 The idea is, is that having had access to
5 Canon's confidential information, information that's not
6 publicly available about our products, the attorneys who
7 have access to that information should not then be allowed
8 to go out, shop for patents, and inadvertently even use that
9 information in deciding which patents to purchase and which
10 ones not to purchase.

11 We, quite frankly, are a little confused that IV
12 is even fighting on this issue because the exact issue of
13 the patent acquisition bar was, in fact, litigated in this
14 court before Judge Stark.

15 THE COURT: But I've rejected it in every
16 protective order I've had that suggested it. So...

17 MR. PENSABENE: That may be the case, your
18 Honor. We recognize that. But, again, I think that -- and
19 I'm not familiar with every case in which your Honor has
20 addressed that, but, again, I think --

21 THE COURT: I don't address it. I just cross it
22 out because I don't think it merits addressing in any kind
23 of written order.

24 So I mean, to me, once again, the bar is
25 confusing the issue of whether the patents that are being

1 issued by the Patent and Trademark Office are valid and
2 enforceable and should be given any value with the issue
3 that you're really talking about.

4 And, quite frankly, I'm assuming that patents,
5 when they issue, are valuable, and I don't -- I just see it
6 as such a --

7 MR. PENSABENE: If I may, your Honor, I think a
8 good analogy might help.

9 THE COURT: I doubt it.

10 MR. PENSABENE: If you'll bear with me and give
11 me the chance.

12 The reason why you have protective orders, for
13 example, is to avoid and prevent a competitor who actually
14 makes products from using your confidential technical
15 information in developing their products. You don't want
16 them to take an unfair advantage of that.

17 In the case of IV and companies like it, I'd
18 submit that IV does not make products, no secret about that.
19 Their product, what they do is acquire patents. Their
20 product is acquiring patents and licensing them.

21 So the same reasoning that applies as to why you
22 don't want a competitor's engineers having access to the
23 confidential information and being able to use that in the
24 products, I think the same arguments would apply to IV, and
25 not allowing them to use it in their products, i.e.,

1 building their patent portfolio. You would allow them to go
2 out, selectively pick which patents they want to acquire in
3 their efforts to assert them against companies such as
4 Canon.

5 THE COURT: I find that a very cynical view of
6 the world, but I don't know whether we want to do issue by
7 issue. If we want to do issue by issue, then I would like
8 to hear from plaintiffs' counsel on that particular
9 paragraph.

10 MR. PENSABENE: Sure.

11 MR. KELLMAN: Good morning, your Honor.

12 THE COURT: Good morning.

13 MR. KELLMAN: Well, I'm not sure I have a lot
14 to say about it in light of your comments. The acquisition
15 bar is a relatively brand-new thing we started hearing
16 about lately, and, quite frankly, I don't understand
17 either.

18 We have an obligation as counsel in this case to
19 look at all sorts of highly confidential information on a
20 daily basis for lots of different clients. It's sort of the
21 nature of what we do for a living, and we're bound by
22 protective orders in the case not to use them in
23 inappropriate ways. There are lots of things we could
24 do inappropriately, but we don't. That's because we are
25 here and, if we do, we suffer the consequences for doing

1 that.

2 As far as advising, this is not an IV-specific
3 clause. This is actually a clause that they are looking to
4 attack our firm from being able -- this is a professional
5 attack on us to be able to prevent us from doing our
6 professional responsibility with respect to other clients,
7 not just Intellectual Ventures.

8 If I'm representing a large company that is
9 different in nature from Intellectual Ventures, that has
10 products that are out on the marketplace and is competing
11 with those products, I would still get -- gain access to
12 information. If I wanted to use it inappropriately, I
13 certainly could by looking the vast portfolios of another
14 large company and trying to assert those, but I don't. And
15 our firm does not do that.

16 There's no particular reason to go way beyond
17 what we already, what the protective order already does,
18 which is say you cannot use the information other than in
19 this particular lawsuit. So we won't, and we will abide
20 by that. There's no reason to add extra protections in
21 there that don't allow the law firms to go and do their
22 own work.

23 THE COURT: I agree. I'm not ready to think
24 this is necessary in our world and I will not embrace it in
25 this case.